

SEP 14 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOEL ARTURO RUIZ-CASTILLO,

Defendant - Appellant.

No. 05-10647

D.C. No. CR-04-02352-RCC

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Raner C. Collins, District Judge, Presiding

Submitted September 11, 2006 ^{**}

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

Joel Arturo Ruiz-Castillo appeals from his 46-month sentence imposed following a guilty plea to conspiracy to export munitions without a license and being an illegal alien illegally in possession of firearms. We have jurisdiction

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

pursuant to 28 U.S.C. § 1291, and we affirm.

Ruiz-Castillo contends for the first time on appeal that the district court erred in not awarding him a mitigating role adjustment, pursuant to U.S.S.G. § 3B1.2. Ruiz-Castillo has failed to meet his burden of proving his entitlement to a § 3B1.2(b) adjustment. *See United States v. Cantrell*, 433 F.3d 1269, 1282 (9th Cir. 2005). The district court properly considered the larger context of the conspiracy and Ruiz-Castillo's culpability relative to the involvement of the other participants. *See United States v. Rojas-Millan*, 234 F.3d 464, 473 (9th Cir. 2000). In view of the evidence reflecting the nature and extent of Ruiz-Castillo's involvement, the district court properly determined that Ruiz-Castillo was neither a minimal nor a minor participant in the conspiracy. *See United States v. Hernandez-Franco*, 189 F.3d 1151, 1160 (9th Cir. 1999).

AFFIRMED.